U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32863664

Date: AUG. 27, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a senior brand manager in the wine industry, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner meets the initial evidence requirements for this classification, either through her receipt of a major, internationally recognized award or, in the alternative, by meeting at least three of the ten evidentiary criteria set forth in the regulations. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

To establish eligibility as an individual of extraordinary ability under section 203(b)(1)(A) of the Act, a petitioner must establish that: (1) they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; (2) they seek to enter the United States to continue work in their area of extraordinary ability; and (3) their entry will offer substantial prospective benefits to the United States.

The term "extraordinary ability" refers only to "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulations set forth a multi-part analysis. First, a petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If such evidence is unavailable, then they must provide sufficient qualifying documentation to demonstrate that they meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Amin v. Mayorkas,* 24 F.4 383, 393 (5th Cir. 2022) (upholding USCIS' two-step review process as "consistent with the governing statute and regulation").

The Petitioner claims eligibility for this classification based on extraordinary ability in the areas of viticulture and wine branding and marketing. The record reflects that she has a bachelor's degree in viticulture and enology from the [redacted] and an MBA from [redacted] Between 2008 and 2018, she worked as an assistant wine maker, associate wine maker, and head of product for a vineyard located in India. At the time of filing, the Petitioner was employed as a senior brand manager for a California-based vineyard in O-1 nonimmigrant status.

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must demonstrate that she satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). She provided evidence relating to seven of the ten criteria and requested that the Director consider comparable evidence of her eligibility under 8 C.F.R. § 204.5(h)(4).

The Director determined that the Petitioner provided evidence of published materials about her and her work in professional or major trade publications or other major media and therefore found she meets the criterion at 8 C.F.R. § 204.5(h)(3)(iii). The record supports the Director's determination.

However, the Director concluded that the Petitioner provided insufficient evidence that she has received lesser nationally or internationally recognized awards for excellence in the field; obtained membership in associations requiring outstanding achievements in the field; made original contributions of major significance in her field; displayed her work at artistic exhibitions or showcases; performed in leading or critical roles for organizations with distinguished reputations; and commanded a high salary or other significantly high remuneration in related to others in the field. *See* 8 C.F.R. § 204.5(h)(3)(i), (ii), (v), and (vii)-(ix). The Director declined to consider the Petitioner's submission of "comparable evidence" under 8 C.F.R. § 204.5(h)(4), noting that she did not meet her burden to explain why the regulatory criteria are not readily applicable to her occupation.

On appeal, the Petitioner asserts the Director did not consider the totality of the evidence she submitted in support of the petition or adequately explain why the additional evidence and explanations she provided in response to a request for evidence (RFE) were deemed insufficient. She maintains that she meets at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) and is otherwise eligible for the requested classification.

Although we conduct de novo review, we conclude that a remand is warranted in this case because the Director's decision is insufficient for review. Although the Director addressed all seven claimed criteria in the decision, the decision does not acknowledge or discuss any evidence or arguments the Petitioner provided in response to the RFE with respect to the criteria at 8 C.F.R. § 204.5(h)(3)(i), (v)

and (viii). In fact, in comparing the RFE and the final decision, the Director's discussion of these three criteria is identical. The Director's failure to address the Petitioner's RFE response is clear error.

We further note that both the RFE and the decision contain few specific references to the evidence submitted or the Petitioner's explanation of why the evidence demonstrates her eligibility under the claimed criteria. For example, the Director did not acknowledge the claims the Petitioner articulated with respect to the awards criterion, her claimed original contributions, or her contentions regarding the significance of those contributions. The RFE and decision make several general observations that the Petitioner submitted evidence derived from "Wikipedia, web portals, domains, blogs, [and] social media" and concluded that such evidence carries "no evidentiary weight." However, the record does not support the Director's determination that the Petitioner relied significantly on evidence from "unreliable" sources as stated. Finally, the Director generally dismissed other materials in the record as "unsourced" or "illegible," but, as noted by the Petitioner on appeal, did not describe that evidence with sufficient specificity to identify it, leaving uncertainty as to what evidence was deemed insufficient.

An officer's written decision must fully explain the specific reasons for denial. *See* 8 C.F.R. § 103.3(a)(l)(i). When a decision does not meet these requirements, the petitioner does not have a fair opportunity to contest the decision on appeal. *See Matter of M-P-,* 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Because the Director's decision does not sufficiently address the evidence submitted with the petition and in response to the RFE, particularly with respect to the criteria at 8 C.F.R. § 204.5(h)(3)(i), (v) and (viii), we will remand the matter.

On remand, the Director is instructed to re-evaluate the evidence submitted in support of the petition to determine whether the Petitioner satisfied the plain language of at least three criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), and to issue a new decision. The Director should also review the Petitioner's appellate brief, which further discusses the previously submitted evidence submitted in support of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3), as well as the supplemental evidence submitted on appeal.

If the Director determines that the Petitioner satisfied at least three criteria at 8 C.F.R. § 204.5(h)(3), the new decision should evaluate, based on the totality of the evidence in the record, whether she has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim, that she is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.